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FILED

DECEMBER 21, 2004

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

CONSENT ORDER

Ralph D'Agostino, M.D.
License No.: 25MA03 134800

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Medical Examiners upon receiving a Medical Malpractice Payment Report which indicated that respondent failed to diagnose the color blindness of patient J.D. who visited the respondent's office for his yearly physical examination as mandated by his employer, New Jersey Transit. J.D. worked as a train engineer for New Jersey Transit.

On April 23, 2003, Dr. D'Agostino appeared with counsel before a Preliminary Evaluation Committee of the Board to answer questions regarding his care and treatment of J.D. Dr. D'Agostino testified that after being trained in industrial medicine, he founded Primary Care Medical Group (Primary Care) in November, 1980, located at 450 Bergen Street, Harrison, New Jersey, specializing in physical examinations for industrial accounts to qualify their workers for continued employment.

Dr. D'Agostino further testified that he conducted physical examinations, including vision screens of J.D., during the years of 1936 through 1995 at the request of his employer, New Jersey Transit. The Committee noted that on February 8, 1986, J.D. had a 1+ noted under sugar in his report of physical examination and a notation that J.D. "should follow-up with primary medical doctor to check fasting blood sugar." J.D. was cleared to return to work. A year later on February 20, 1987, J.D.'s sugar was noted as being 2+. Based on his sugar level, J.D. was not qualified to return to work until Primary Care received a note from his primary care physician, stating that he had "Mild Diabetes-Type II Non-Insulin Dependent" and was treated with oral hypoglycemic drug (Diabinese 250 mg daily). No physician of Primary Care group ever referred back to this, or any other years' medical finding, pertaining to J.D.'s diabetes or any prior existing condition at any subsequent physical examination, that was completed by Primary Care to qualify J.D. for his position as a train engineer.

J.D. did not disclose his diabetes and medications at any subsequent qualification exam at Primary Group following the February 1987 disclosure. When questioned by the Committee as to why no physician at the Primary Care group inquired whether J.D. was still being treated for diabetes. Dr. D'Agostino testified that prior to 1996 patient records were maintained in his office file cabinets only according to company name and year. The current year's medical examination was simply placed in alphabetical order in the file cabinet designated for that particular employer and year. Dr. D'Agostino further testified that prior years' records would be sent to storage when filing space became limited. In 1996, Dr. D'Agostino retroactively changed his filing system so that now every years' examination records are included in the patient's file.

The examination of Primary Care's medical records of J.D. also revealed that his Color Discrimination Tests' results became progressively worse. On February 7, 1994, Dr. D'Agostino's medical assistant tested J.D.'s color distinguishing abilities using Dvorine Pseudo-Isochromatic

Plates. J.D. missed two responses **out** of the fourteen **on** the **Color** Discrimination Test. **On his next mandatory physical exam** at Primary Care on **February 6, 1995**, J.D. missed **six** responses on the same test, **putting** him in the **moderate** disabled **category** according to the Dvorine PIP Test Classifications. The Dvorine testing instructions also state that anyone who misses five **to** eleven responses out of the **fourteen may** only be **employed** in occupations where critical color judgement is not essential. Because J.D. passed the Nomenclature Test** on February 6, 1995, Dr. D'Agostino medically certified him as fit for duty as a train engineer. Dr. **D'Agostino** testified **that had he** seen the prior eye **exam. he** would have referred the patient **to** see **an** ophthalmologist and that he **would** recommend him not return to work until obtaining the ophthalmologist's **approval**. Subsequently, while on **duty**, J.D. **was** involved in a train **crash** that resulted in three deaths.

Upon review of all available information, the Board of Medical Examiners (**Beard**) **finds that** Dr. D'Agostino **engaged** in repeated acts of negligence **by failing to** detect J.D.'s decrease in visual acuity, **and** failing to appropriately follow his diabetes in violation of **N.J.S.A.45:1-21 (d)**. The Board finds that Respondent **was** negligent in medically qualifying J.D. to return to work **based upon** the vision screening result documented on February 6, 1995 in violation of **N.J.S.A.45:1-21 (c)**. The Board further finds that Respondent did not **have** an appropriate record-keeping system which would have allowed him to chart the degeneration of J.D.'s eyesight over a period of time, **and to** detect a change in his diabetic status. The Board finds that Respondent failed to comply with **N.J.A.C. 13:35-6.5** in violation of **N.J.S.A. 45:1-21 (h)**.

The parties, having agreed **to** the resolution of this matter without further formal proceedings, **and** Respondent having agreed **and** given his voluntary consent to the within Order. **and** the Board finding the within disposition is adequately protective of the public health, safety **and** welfare, **and** other good cause having been shown,

**Test to identify colors (red, brown, purple, yellow, blue, green, gray and orange) of circles on a rotating disk.

IT ~~IS~~, therefore on this 15^m day of December, 2004

ORDERED THAT

1. Respondent, **Ralph D'Agostino, M.D.** be and hereby ~~is~~ reprimanded for medical practices in violation of N.J.A.C. 13:35-6.5 and N.J.S.A. 45:1-21 (c) , (d) and (h).

2. Dr. D'Agostino's license to practice medicine in the **state** of **New Jersey** is hereby **suspended** for a period of one (1) **year** effective December 15, 2004. The first three (3) months shall **be served as a period** of active suspension, **with** the remaining nine (9) months stayed **and served as a period** of probation.

3. Dr. D'Agostino shall submit **a comprehensive plan** which details the changes he will **make**, or has **already** made, to his **record-keeping** system to ensure that his office will maintain accessible, comprehensive patient records by December 15, 2004 to the New **Jersey** State Board of **Medical** Examiners, **140** E. Front Street, P.O. **Box** 183, Trenton, New Jersey 08625-0183.

4. Dr. D'Agostino **shall**, within one year following the entry of this Order, **take** and successfully complete an ethics course **approved** in **advance** by the Board. Successful completion means that **all** sessions were **attended**, all assignments were properly **and appropriately** completed, **and a** passing grade was achieved which was unconditional and without reservation. Respondent shall submit **proof of** successful completion of said course-work to the Board within one (1) year hereof.

5. Dr. D'Agostino shall, within one year following the entry of this Order. **take and** successfully complete **a** medical record-keeping course approved in **advance** by the Board. Successful completion means that **all** sessions were attended. all assignments were properly and appropriately completed, and **a passing grade** was achieved which **was** unconditional and without

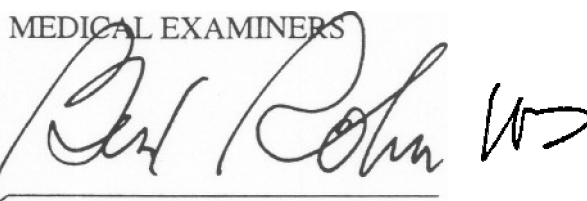
reservation. Respondent shall **submit proof of successful completion** of said course-work **to the Board** within **one (1)** year hereof.

6. Dr. D'Agostino shall **pay** costs of investigation **and** attorneys fees in the amount **of \$3318.97 and a civil penalty in the amount of \$5000.00** for a total of \$8318.97 to **be** remitted contemporaneously with his submission of this Order. The Board reserves the **right** to file a **certificate of debt** in the event payment in **full is not** received.

7. Dr. **D'Agostino** shall comply **with** the "Directives **Applicable to** any Medical **Board** Licensee who is Suspended, Revoked or Whose Surrender of Licensure has been Accepted." attached hereto **and** made **a part** hereof.

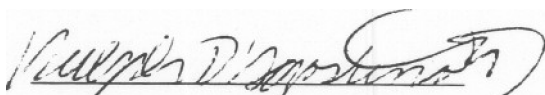
NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By:



Bernard Robins, M.D., F.A.C.P.
Board President

I have read the within Order
and agree to its terms.



Ralph D'Agostino, M.D.

I hereby consent to the form and
entry of the within Order.

R. Scott Eichhorn, Esq.

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 30, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification,

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the

licensee shall promptly **provide** the record **without** charge **to the** patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NOTICE OF REPORTING PRACTICES OF W A R D
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for **public** inspection. **Should any** inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy **will** be provided if requested. All evidentiary hearings, proceedings on **motions** or other applications which are conducted as **public** hearings and the record, including the transcript and **documents** marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is **based on** reasons relating to professional competence or **professional** conduct:

- (1) Which revokes **or suspends** (or **otherwise** restricts) a license,
- (2) Which censures, reprimands or places **on** probation,
- (3) **Under** which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to **report** to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other **loss of license** or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether **by** operation of law, voluntary surrender, non-renewability, or **otherwise**, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, **suspends**, revokes or otherwise places conditions on a license or permit, it is **obligated** to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every **other** board **licensee** in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the **Federation of State Medical Boards** of the United States, a list of all disciplinary **orders** are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the **order** will appear on the public **agenda** for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the **same** summary **will** appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public **requesting a copy**.

On a periodic basis the Board disseminates to its licensees a **newsletter** which **includes** a brief description of **all** of the **orders entered by the** Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of **the** content of **public** orders.

Nothing herein is intended in any way to **limit** the Board, the Division or the Attorney General **from** disclosing any public document.